



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION FOR THE
CARLSBAD ENERGY CENTER PROJECT**

DOCKET No. 07-AFC-6

**COMMITTEE ORDER DENYING CHANGE OF OWNERSHIP PETITION
(WITHOUT PREJUDICE)**

On December 23, 2008, Exelon Corporation and Exelon Xchange Corporation ("Exelon") filed a Petition for Approval of Post-Certification Change of Indirect Ownership and Control (20 CCR § 1769(b)) or, in the Alternative, for Determination that Rule 1769(b) is Inapplicable to Transaction ("Petition"). No responses to the Petition have been filed by any party.

Carlsbad Energy Center LLC ("Carlsbad") is the applicant in this proceeding. Carlsbad is in turn owned, through intermediate subsidiary corporations, by NRG Energy, Inc. ("NRG"). NRG also indirectly owns Cabrillo Power I LLC, the owner of the existing Encino Power Station next to which Carlsbad proposes to construct and operate the Carlsbad Energy Center. Exelon is attempting to purchase NRG in a transaction best characterized as a hostile takeover. If Exelon is successful in purchasing NRG, Carlsbad will remain the applicant and proposed licensee in this proceeding.

We applaud Exelon's filing of its Petition before consummating a purchase of NRG. Too often, the Energy Commission's approval of a change of ownership is sought only after the corporate transaction is completed.

Exelon asserts that a change of ownership of a parent of the corporate entity that is applying for or holds an Energy Commission license is not a change of ownership for which approval is required under Cal. Code of Regs., tit. 20, § 1769(b). It requests our confirmation of that interpretation or, alternatively, should we find that the proposed transaction is a change of ownership subject to §1769, our approval of the transaction.

Section 1769 does not define "ownership." It refers to "ownership or control of a facility." §1769(b)(1). We do not infer an intention to include indirect owners from that reference. To the contrary, general principles of corporate law hold that the owners of a

corporation are not individually responsible for the corporation's obligations.¹ Thus the Energy Commission's regulatory relationship is with the first-line corporate owner of the facility, not with its parent corporations. Parental changes are not relevant to that relationship.

As Exelon's proposed acquisition of NRG will not change in the proposed ownership and operation of the Carlsbad Energy Center by Carlsbad, no approval from the Energy Commission is required.

The Petition indicates that Commission staff told Exelon's counsel that it (staff) was "unclear whether Rule 1769(b) applies to the proposed transaction." Although our Hearing Officer informally suggested to staff that it respond to state its position, no response has been received. Nonetheless, because this is a question that will recur and in the interest of consistency in the application of our rules, we are delaying the effective date of this decision in order to allow staff or any other party to call our attention to any relevant facts, argument or authority which might affect the above analysis.

THEREFORE, the Committee **ORDERS** that the Petition is **DENIED WITHOUT PREJUDICE**. This order shall be effective on April 27, 2009 unless, prior to that date, Exelon or a party in this matter docket and serves a request, with supporting argument and authority, that the Committee amend or modify this decision.

Dated: April 9, 2009, at Sacramento, California.

Original signed by

JAMES D. BOYD
Vice Chair and Presiding Member
Carlsbad AFC Committee

Original signed by

KAREN DOUGLAS
Chairman and Associate Member
Carlsbad AFC Committee

¹ In some instances, a corporation may be found to be a "sham" and the corporate shield ignored. Our application of §1769 may vary in such circumstances.